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Appeal Decisions Due From DHCS

by David Gorn

The Department of Health Care Services will issue a decision this week on the first "test case" appeal hearings to decide eligibility for the new Community-Based Adult Services program, according to DHCS officials.

The first appeal hearings were held May 30. After judges submit rulings to the state, the DHCS director has 30 days to decide whether or not the department accepts those rulings.

"We have received under 20 decisions [from judges] so far," said Norman Williams, deputy director of public affairs for DHCS. "The first one was on or around June 18, and they've been on a flow basis since then."

Thirty days from June 18 is today.

"A decision will come this week," Williams said. "Nothing has been finalized, we're still working on it. We're still within the 30-day time period to decide on them."

The state has said that the first 10 to 12 cases heard May 30 and 31 are being seen as test cases for the estimated 1,800 appeal hearings scheduled so far. The number of appeal hearings is expected to rise as DHCS continues its eligibility determination process.

According to Elissa Gershon, attorney for Disability Rights California, another big decision will come from a June 14 hearing in which a judge considered the legality of one type of eligibility denial.

"We understand that a judge was ruling on the legality of overturning the face-to-face eligibility," Gershon said. At least 500 to 600 of the appeals are based on that type of denial, Gershon said, where a nurse conducted a face-to-face assessment of a potential CBAS beneficiary and determined that person was eligible -- only to be reversed by the state's quality assurance review.

Gershon said the QA (quality assurance) process in the settlement agreement was never intended to undo eligibility, but was supposed to make sure that everyone eligible was actually ruled eligible.

"That was specifically designed for protection of class members," Gershon said. "Not to reverse eligibility."

Williams has a different take on it. "Part of the process is that second-level review," Williams said. "It's a part of the process, it's part of what we use to determine eligibility for the CBAS program."

The judge in those QA cases said he would send a ruling to DHCS within a week, according to Gershon, so a decision on the QA process may be among the early cases delivered, she said.